IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 10594 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE A.M.KAPADIA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MAHESHBHAI D HINDUJA

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 10594 of 2003

MR VAIBHAV A VYAS for Petitioner No. 1

MS. MITA PANCHAL, APP for Respondent No. 1

RULE SERVED BY DS for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 25/08/2004

ORAL JUDGEMENT

By means of filing this petition under Section 482 of the Code of Criminal Procedure ('the Code' for

short), petitioner against whom Criminal Complaint No. 9822 of 2003 is filed by respondent No.2 in the Court of learned JMFC, Municipal Court, Baroda for alleged commission of the offence under Section 420 of the IPC, wherein process has been issued, has prayed to quash and set aside the said complaint which is at Annexure-A to the petition.

2. According to the petitioner, he has availed finance for purchase of Kinetic Honda Scooter from respondent No.2 original complaint. The petitioner has made full and final payment in respect of the said finance availed by him on 9.3.1999 by paying Rs.3790/- in cash and by adjusting the security deposit for the remaining amount of Rs.7750.66 paise and in this respect respondent No.2 had issued a stamped receipt dated 9.3.1999 wherein it has been clearly stated "full and final payment (Security Deposit Adjusted)". Though the petitioner had made full and final payment in respect of the said finance availed by him, respondent No.2 did not return the post dated cheques, mentioned in the complaint in question, issued by the petitioner at the time of availing the finance and subsequently the same are misused by respondent No.2. The petitioner was also not issued original documents and registration book of the vehicle which was hypothecated with respondent No.2 inspite of his repeated requests and reminders and therefore finally the petitioner was constrained to file consumer complaint being complaint No. 415 of 2002 before the Consumer Disputes Redressal Forum. In the said complaint the Forum by an ex parte order dated 5.11.2003 was pleased to held that the fact regarding full and final payment of the loan by the petitioner was proved and accordingly the respondents therein were directed to return original documents, R.C. book of Kinetic Honda to the petitioner. The respondents therein were further directed to pay Rs.1000.00 to the petitioner in respect of mental harassment and Rs.1000.00 in respect of cost within 30 days from the date of receipt of the order. The petitioner has also preferred an execution application, being Civil Misc. Application No. 170 of 2003 before the Consumer Dispute Redressal Forum, under Section 27 of the Consumer Protection Act, 1986 for enforcement of the aforesaid order of the Forum and the same is pending before the Forum. Pursuant to the aforesaid order of the Forum, the petitioner has also filed a caveat application before the Consumer Disputes Redressal Commission. Notwithstanding above facts situation, the respondent No.2 filed Criminal Case No. 9822 of 2003 in the Court of learned JMFC, Baroda alleging offence under Section 420 of the IPC against the

present petitioner by misusing the post dated cheques which were not returned by respondent No.2 at the time when the petitioner made full and final payment of the finance availed by him. The learned Magistrate issued summons to the petitioner.

3. By filing this petition, petitioner states that no offence as alleged in the said complaint is disclosed or made out against the petitioner as the petitioner has not committed any offence as alleged in the complaint in question. It is also pointed out that the entire complaint as filed by respondent No.2 is absolutely misconceived both in law as well as in fact. It is also asserted that a bare reading of the contents of the complaint and the allegations clearly shows that the precondition for institution of the proceedings under Section 420 of the IPC are not fulfilled. It is emphasised that the action and conduct of the complainant in resorting to filing of the complaint is nothing but the abuse of process of law with a view to extort money by misusing the process of law by way of instituting malicious prosecution. On aforesaid premises, it is averred that this Court, in exercise of its inherent powers under Section 482 of the Code, quash the same in the interest of justice, and therefore, it is prayed for the relief to which the reference is made earlier.

4. I have heard Mr. Vaibhav A Vyas, learned advocate of the petitioner and Ms. Mita Panchal, learned APP appearing on behalf of respondent No.1 State of Gujarat. Though respondent no.2 served, none appeared on his behalf. I have also perused the averments made in the petition as well as the impugned complaint and the annexures annexed with the petition.

5. There is no dispute that the petitioner has availed finance for purchasing Kinetic Honda Scooter from respondent No.2. Petitioner has issued in all 36 post dated cheques. For the amount of remaining 20 cheques the petitioner paid the outstanding amount in lump sum. At that time there was understanding between the parties that the two cheques bearing cheque Nos. 823584 and 823585 dated 10.3.2000 and 10.4.2000 respectively amounting to Rs. 941/- each have to be returned to the petitioner. Notwithstanding the aforesaid facts situation, respondent no.2 did not return the said cheques and on the basis of the said cheques, it has filed the criminal complaint. Since RC book was lying with the respondent No.2, petitioner filed proceedings before the learned Consumer Disputes Redressal Forum bearing Complaint No. 415 of 2002 against the respondent

No.2 claiming the relief to hand over the RC book which was deposited with the respondent No.2 original complainant as the amount is fully paid by the petitioner to the respondent No.2. On adjudication of the said case, Forum has recorded the finding that since the petitioner has paid the full consideration of the purchase price of the Kinetic Honda Scooter, therefore, respondent No.2 was directed to hand over the RC Book to the petitioner.

6. In view of the aforesaid finding there is no manner of doubt that there is no outstanding dues from the petitioner in connection with the purchase of Kinetic Honda Scooter. Therefore, the complaint filed by the respondent No.2 claiming the amount of Rs.1882.00 by two different cheques amounting to Rs. 941.00 each, bearing Nos. 823584 and 823585 dated 10.3.2000 and 10.4.2000 respectively, is nothing but abuse of process of the Court. Respondent No.2 has concealed the said fact at the time of filing of the complaint and therefore the criminal complaint No. 9822 of 2003 deserves to be quashed and set aside as no offence alleged under Section 420 of the IPC has been committed by the present petitioner.

7. For the foregoing reasons, petition succeed and accordingly it is allowed. Criminal Complaint No. 9822 of 2003 filed in the Court of Learned JMFC, Municipal Court, Baroda and the process issued thereunder is hereby quashed and set aside. Rule is made absolute accordingly.

(A.M.Kapadia,J)

Jayanti*